

UT 03-6

Tax Type: Use Tax

Issue: Use Tax On Out-Of-State Purchases Brought Into Illinois

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**Jane Doe,
Taxpayer**

**No. 00-ST-0000
IBT #: 0000-0000
NTL #: 000000000000000000**

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

Appearances: Michael R. Abramovic, Special Assistant Attorney General, for the Illinois Department of Revenue (the "Department"); Jane Doe (the "Taxpayer"), appearing *pro se*.

Synopsis:

This matter arose from a timely filed protest to a Notice of Tax Liability mailed to the Taxpayer on July 29, 2002, assessing Illinois Use Tax on jewelry purchased by the Taxpayer in Greece that she declared on a U.S. Customs Passenger Declaration form upon returning to the United States. An evidentiary hearing was held on May 22, 2003. The parties did not file post-hearing briefs.

I am recommending that the Notice of Tax Liability be made final.

Findings of Fact:

1. The Department issued a Notice of Tax Liability to the Taxpayer, an Illinois resident, on June 5, 2002, based on a *Form SC-10-K—Audit Correction and/or Determination of Tax Due (12/93 to present)* (the “Audit Correction”). Dept. Ex. No. 1.
2. The Audit Correction is based on a U.S. Customs Passenger Declaration. *Id.*
3. The Audit Correction calculated the tax on the value of jewelry declared by the Taxpayer on the U.S. Customs Passenger Declaration. *Id.*

Conclusions of Law:

The issue in this case is whether the Taxpayer is liable under the Illinois Use Tax Act (the “Act”), 35 ILCS 105/1 *et seq.*, for tax assessed on jewelry she purchased while she was in Greece. She brought the jewelry back to Illinois and declared its value at \$3,000 on a U.S. Customs Passenger Declaration when she reentered to the United States. The Department assessed use tax on this jewelry calculating the tax on the basis of its declared value.

The Department’s *prima facie* case is established at a hearing before the Department or any legal proceeding by the introduction into evidence of the Department’s records under the certificate of the Director. 35 ILCS 120/8¹ *Central Furniture Mart v. Johnson*, 157 Ill.App. 3d 907 (1st Dist. 1987) *Id. Copilevitz v. Department of Revenue*, 41 Ill.2d 154, 242 N.E.2d 205 (1968). Therefore, the Department’s *prima facie* case was established with the introduction of the Audit Correction.

The assessment made by the Department is based on several sections of the Act. The Act imposes a tax “upon the privilege of using in this State tangible personal

¹ The Use Tax Act makes numerous sections of the Retailers’ Occupation Tax Act (120 ILCS 120/1 *et seq.*) applicable to the Use Tax. 35 ILCS 105/12. One of the sections made applicable is 35 ILCS 120/8.

property purchased at retail from a retailer . . .” 35 ILCS 105/3. "Purchase at retail" means the acquisition of the ownership of tangible personal property through a sale at retail. 35 ILCS 105/2. "Sale at retail" means any transfer of the ownership of tangible personal property to a purchaser, for the purpose of use, and not for the purpose of resale. *Id.*

At the evidentiary hearing, the Taxpayer testified that she purchased the jewelry in Greece at the request of a friend who lives in Wisconsin. She stated that the friend had initially planned to accompany her to Greece. She stated that her friend gave her about \$1,500 towards the cost of the jewelry. She testified that she gave the jewelry to her friend upon her return to the United States. However, she offered no documentary evidence establishing that she did not purchase the jewelry at retail for use in Illinois. Nor did she offer any authority for the proposition that property purchased by a resident of Illinois for the purpose of gift giving is not a taxable purchase.

To overcome the Department's *prima facie* case, the taxpayer must present consistent, probable evidence identified with her books and records. *Copilevitz v. Department of Revenue*, 41 Ill.2d 154, 242 N.E.2d 205 (1968); *Central Furniture Mart v. Johnson, supra*. Testimony alone is not enough. *Mel-Park Drugs, Inc. v. Department of Revenue*, 218 Ill.App.3d 203, (1st Dist. 1991).

In this case, the Taxpayer offered three documents into evidence. The first document was a welcoming letter dated April 28, 2000, from the social hostess of the cruise ship on which the Taxpayer sailed to Greece. The second document was a letter dated January 2, 2003, signed by John Doe acknowledging the receipt of the jewelry from the Taxpayer, and stating that it was received as a gift. The third document is a letter

signed by Mary Doe dated March 7, 2003, stating that she accompanied the Taxpayer on the trip to Greece, and that she was with the Taxpayer when she bought the jewelry in question.

The first document was admitted into the record as evidence supporting the fact that the Taxpayer went to Greece. The Department objected to the second and third documents as hearsay and the objections were sustained. The second and third documents were then accepted as offers of proof. However, none of these documents, whether considered separately or together, are evidence sufficient to overcome the Department's *prima facie* case.

In this case, the Taxpayer failed to present any consistent, probable evidence identified with her books and records sufficient to overcome the Department's *prima facie* case. For the reasons set forth above, I recommend that the Notice of Tax Liability be made final.

ENTER: July 7, 2003

**Charles E. McClellan
Administrative Law Judge**